THE PENNSYLVANIA RAIL ROAD.

ADDRESS

OF THE

COMMITTEE OF SEVEN

TO

THE CITIZENS OF PHILADELPHIA,

AND OF PENNSYLVANIA,

APPOINTED AT A TOWN MEETING, HELD AT PHILADELPHIA, ON THE 28TH OF APRIL, 1846.

JESPER HARDING, PRINTER.

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made with the Chicago & Iowa and the Michigan Central Companies; that the rate of interest on the bonds was eight per cent. These are the statements of the circular.

The most important object to be accomplished by the C. B. & Q. Company, and which induced it to connect itself, by traffic arrangements and other contracts, with Chicago and Iowa, and with the C. D. & M. are set out in the various contracts, but are not fully set forth in the circular. There had been friendly relations between the C. B. & Q. R. R. Company, and the Illinois Central Company, and the business of the main line of that Company largely passed over the C. B. & Q. from Mendota into Chicago and vice versa. All its travel from Dubuque, and from its line west of Freeport, and from all the Northern Iowa, was passing between Freeport and Chicago over the Chicago & Northwestern Road. This travel was very large, and the business was very valuable.

Could the Chicago & Iowa Road, which had been planned to strike the river and cross it at Bellevue, twenty miles below Dubuque, be diverted from that plan and strike the Iliinois Central at Forreston, this latter Company would send all that travel, as well as all its freight, over the Chicago & Iowa Road, and over the C. B. & Q. Road, between Aurora and Chicago. The great motive of the C. B. & Q., and its Board was to secure this result. By the arrangements and agreements made, this result has been secured. One-half of the capital stock of the Chicago & Iowa Road, also amounting to $630,000, was secured to the C. B. & Q. Company. Another important purpose was to secure the travel and business of the C., D. & M. Road itself over the C., B. & Q., though this was

of much less value than that of the Illinois Central Road.

The whole plan has not been carried out, and, therefore, all the fruits of it have not as yet been secured to the C. B. & Q., and yet, perhaps, it is well to ascertain what has been saved and secured, that the moving cause of the action all through may be understood. The whole passenger business of Northwestern Illinois and of Northern Iowa, commanded by the Illinois Central Company, has been taken from the Northwestern, and that and its freight business has been turned over Chicago and Iowa and C. B. & Q. into Chicago. The bonds resting upon the Chicago & Iowa are about $1,700,000, and the stock is about $1,300,000, both amounting to $3,000,000. The earnings of the road for its eighty miles about were last year $544,-703.55; the operating expenses were $300,307.53, leaving net $244,396.02; interest on bonds during the year, $140,000, leaving net above interest $104,396.02, which is eight per cent. upon the whole capital stock. The stock of that Road is, therefore, worth par, and the C., B. & Q. has of that stock, obtained by these arrangements, $630,000.

The business, therefore, obtained by these agreements, creates a value of $3,000,000 for a road of eighty miles long. All that business passes over the C., B. & Q. between Chicago and Aurora, not quite forty miles, and capitalized on that road, as it is, in the Chicago & Iowa, the value of that business would be $1,500,000 to the C. B. & Q. Road, to which add the value of the stock obtained in the Chicago & Iowa, $630,000, and the net profit is $2,630,000.

It is not perhaps necessary to show the other anticipated advantages to the C., B. & Q. from the arrange-

ments, had the plan be completed, but it is safe to say that they would surpass all which it has realized from the success of the part of the programme in which Illinois Central and Chicago & Iowa are interested. Had there not been a mistake in the estimated cost of the River Roads, these plans would have now been in process of realization. These results in part realized, and in part defeated for the present, were the motives which moved the Board to these arrangements, and with the full belief that the bonds of the River Road would be good, led to their being offered to the stockholders of the C., B. & Q., and to the taking of them so largely by the members of the Board themselves, who indeed were individually takers of much larger amounts than any other stockholders.

Thus far, the statement of facts, and motives of the Board show the most perfect good faith of the gentlemen composing it—show what the books call *uberrima fides*. No possible case could be stated showing such faith sustained by actual investments in the bonds offered to stockholders.

There is another element in the case, however, and it remains to ascertain the effect of that element upon the question. There had been formed at Dubuque after as large subscription to stock had been made as it was possible to obtain, a Construction Company under the Laws of Iowa, with a capital of $300,000 actually subscribed, for the purpose of taking the contract to build the road and receive the bonds and the unsubscribed stock of the Railroad Company, and enter into a contract for its construction, and such a contract had been made. The hope doubtless, and the expectation of making a profit induced men to take stock in a Construction Company, who

would not subscribe stock in the Railroad Company where they would pay par for stock, and the chance for profit was less. The $300,000 capital in the Construction Company was raised and the work of construction was in progress when the plans and their effects upon the C., B. & Q. and its stockholders were brought to the notice of the Board, and after discussions and negotiations for some months between all the Railway Companies interested, it resulted in the agreements above alluded to which came before the C., B. & Q. Board for action in June, 1871, one of the results of which was the circular above alluded to. In the meantime, after all the agreements had been completed and while the boards of the various Companies were considering them, that of the C., B. & Q. being the last to do so, the insecurity of a traffic contract to control traffic without the control of the stock of the road was discussed among the members of the C., B. & Q. Board. In Michigan the Michigan Central had then recently lost all the benefits of the Kalamazoo & Grand Rapids Road, which it had aided by traffic contract simply because neither it nor its friends controlled the stock. It passed into the control of the Lake Shore & Michigan Southern, and all its business was commanded against the Central. The traffic contract was violated and became useless. It had become therefore a resolution with us to make no contract agreement, where in some way we did not control the stock of the Company with which such a contract was made. Indeed it seemed much like a farce to give a credit to bonds by a traffic contract which provided a fund to buy them, when the road might pass into the hands of a rival Company at any time and the fund be destroyed because all the business might be sent over another road than ours, even after we had given its

bonds credit and sold them. This would be using a traffic contract to obtain money of stockholders, when the whole value of such a contract to them might be destroyed any hour, by the purchase of stock by, or by a lease of the road to any rival Company. They intended to invest largely in the bonds of the C., D. & M. Road, and for their own protection as well as that of others who might take them, they deemed it necessary to control that road beyond contingency. In these circumstances a party was made up to buy a majority of the stock of the Construction Company. The party was composed wholly of stockholders of C., B. & Q., some of whom were in the Board, and some of them were outside. They bought just a majority and no more, at exactly the cost of it. Though the great motive was control of stock, yet they believed that no money would be lost. They believed it a safe investment with a possibility of profit. Had they been very sanguine of this, and that the profits would be large, they would have bought more than just the control, as they might have done at the same rate.

The question which arises upon this additional fact is this: Does it change the position of the members of the Board who voted for the circular, and who, at the same time, had joined in the purchase of the stock of the Construction Company, so as to make them liable for every bond taken by a stockholder, and every stockholder, in case they choose to demand of them the price paid and offer to give them the bonds? Now, certainly, this would be an extraordinary liability in these circumstances, and one which it will be difficult to find any principle, and certainly no case can be found to support.

First—The proceeds of the sale of the bonds, both those which they themselves took and those which might be sold to other parties, were to go into a railroad, to aid in its construction, in which those parties were interested as stockholders, as above stated, to the extent with other C., B. & Q. stockholders, of just a little more than half its stock. Every taker of bonds fully understood that their money was to be expended upon the road and subject to the contingencies as to cost—miscalculation of engineers, and other chances which always attend such enterprises. The learned counsel who gives an opinion to the committee, is compelled to admit that there was no misstatement in the circular, and that the enterprise was fairly stated therein to the stockholders of the C., B. & Q. Company. Upon general principles, therefore, there can be no reason why those who voted for that circular in the C., B. & Q. Board should be subject to any more than their fare share of the risks as assumed by them in taking the bonds.

There can be no reason why they should become liable to other parties for monies paid by them for bonds, which has been expended in the exact manner in which all understood it was to be expended. They were not guarantors—they did not even recommend or advise stockholders to buy. They simply stated facts, and said that they were authorized to offer those bonds to stockholders. The money went into an enterprise in which they had an interest as stockholders, but only a part interest. If the facts of the case were similar to those of the case cited by the counsel who gave the opinion to the Committee, so that the principle of that case could apply to this, then possibly a bill might be

maintained against the Construction Company to cancel the contracts for the sale of the bonds. There is, however, no resemblance in the facts, nor consequently in the principles involved. The case cited as being much in point, was between two Corporations. One was a Telegraph Company desiring to lay a cable along the coast of South America; the other was a munufacturer, and as such accustomed to contract for building lines of telegraph. The Telegraph Company had an engineer in its employment upon whose estimates and judgment it relied in making its contracts. The Manufacturing Company, negotiating to build the telegraph line, while negotiating the contract with the Telegraph Company, employed the engineer of the latter Company, making a sub-contract with him to do the work, and then having interested the party upon whose judgment the other party relied in entering into the contract for them, closed the contract with the Telegraph Company. To speak plainly about the matter, though the Vice Chancellor uses mild words in his opinion, the Manufacturing Company bought the Engineer of the other party and then made a contract with it, knowing that it was guided by the statements of the Engineer whom they had interested for themselves. There could not be much difficulty in setting aside a contract obtained under such circumstances. But a simple statement of the case is enough to show that there is no analogy between that and this case.

But let us test the case a little further. The opinion of the learned counsel is that the members of the Board of C., B. & Q. who voted for the circular, and who, at the same time, had an interest in the Construction Company, are liable to be called upon to refund the

money to every bondholder who took the bonds in consequence thereof, though it has not gone into their pockets but into a railroad exactly as intended. If so, then each of them who so voted is liable for all the bonds so sold, and he is liable simply because he had bought a share of the stock in the Construction Company, and did not cause the act of such purchase to be stated in the circular. If this be so, then if only one of the members of the C., B. & Q. Board, while these negotiations were going on, had bought a share in the Construction Company, and then voted with the other members of the Board for the circular, though the vote was unanimous, he would become liable for all the bonds sold under it, if the enterprise was unsuccessful. If it was the unanimous opinion of the whole Board that the circular was expedient, and the one who had bought a single share of construction stock agreed with them, why should he vote against it, and if he agreed with them, why should he be liable for the whole results of the enterprise? And if the principle is true upon which Mr. Hoar rests, and there was but a single member of the C., B. & Q. Board who voted, and who had a single share of construction stock costing a $100, he would become liable for every bond sold in consequence of the circular, though the money went in good faith. every dollar of it, to build the road exactly as all understood it should go, and though he might be but one stockholder of one share of the Construction Company, with a thousand others, and though, like all the other members of the C., B. & Q. Board, a company whose interests were largely involved, he believed the bonds were perfectly good, and evinced his faith by taking very largely of them, and though there were abundant good reasons con-

nected with the C., B. & Q. Company's Road, to whose stockholders the circular was addressed, which would induce him to vote for it, and which should induce them to subscribe. It is safe to say that no principle which leads to such results can be found either in law or equity, and that no possible case can be found which by remote analogy even sustains any such principle. The case cited is the fartherest possible from doing it. There is no resemblance or analogy between them. The great benefits of the arrangements made, of which the traffic contract and circular are a part, have resulted to C., B. & Q. alone, in which all its stockholders are interested. If any party should suffer for an unfortunate investment, it should be the party for whom the members of its board acted, and which has been very largely benefitted, and not the members of the board who are sufferers beyond any stockholders out of it.

Even had these members of the Board who voted holding a majority of this construction stock held the whole of it in these circumstances, and had been the owners of the bonds, and they had been offered under this circular stating the interest of the C., B. & Q. with careful truth, and that the money arising from sale of the bonds was to be expended in the construction of the road under a mortgage upon which the bonds were issued, they themselves taking a large amount of them, there could be no such liability. In such a case it is understood by all parties taking bonds that a road is to be built, that there are chances and possibilities of mistakes in estimates of cost, and in results as to the profitableness of the adventure. All alike take the chances of this. In such a case, good faith would require that all should pay alike for their bonds the

same amount of money, and that the money should be expended as it was understood it should be, in the construction of the road. It is difficult to perceive how the nicest sense of good faith required more. The case upon principle may be illustrated by stating a case: suppose there are ten men who unite together to build a railroad, believing it will be profitable, and believing it will benefit other property largely which they own in its neighborhood, as well as other similar property owned by many other people and corporations, such for instance as iron and copper mines which are located along a proposed road. The ten subscribe to the stock $200,000 each. Seven of them are elected directors, and they are charged with the construction of the road. They believe that the stock will be very valuable. They put a mortgage upon the property of $6,000,000. The other three are charged by resolution of the Board with the sale of, and offer, the bonds to all parties who are interested in the property to be benefited by the construction of the road; they state the common interest in its construction, that a large amount of stock, $2,000,000, is subscribed, and offer the bonds, stating at the same time the parties in interest reserve and shall take three millions themselves of the bonds, but they do not state that they own $600,000 of the stock which they shall pay in in cash, nor are they asked if they have taken stock. They offer the bonds to the members of corporations whose property will be largely benefitted, and in which they themselves are directors. The bonds are taken by such parties, except the $3,000,000 reserved for the stockholders of the railroad company. The work goes on, they pay for *all the stock* subscribed by them, and for all the bonds, as do all others. It is found, however, that all the means will not finish the road, and

the road so far as finished will not pay the interest on the bonds issued.

Now, what is the position of the parties. Have all those, other than the seven men Directors, when the enterprise has become disastrous, a right to turn round upon the three, and say, "You had a very large interest in the stock of this company, which we did not have; indeed, you put $600,000 of money into the stock, and did not tell us *you had done so*, and though you took $900,000 of the bonds also, and paid just the same for them as we did, yet the thing has resulted badly, and you must take the bonds which we took, and pay us back our money, principal and interest." Can this be law or equity, or would it be common fairness between men and men, and yet that is the principle set up by the opinion published by the late Attorney General. Says that learned gentleman: "He who recommends and professes to join with another in a purchase cannot, I think, have an undisclosed interest as the seller, without becoming liable to the consequences, if his associates, after the purchase has proved unfortunate, discover that the adverse interest existed, and elects to rescind the bargain." This is the pith of his opinion. Is such an undisclosed interest an adverse interest? Does it tend to prejudice the purchasers of the bonds? Does it not, in fact, show the utmost confidence in the investment, and the most perfect good faith in selling the bonds? If the interest had been disclosed, would it not have strengthened the bonds immensely in the estimation of the taker?

But there can be no principle upon which any party can be called to suffer in behalf of a joint investor with themselves, where it is understood that the proceeds of the investment are to go into a public work, upon the success of which depends the value of the common

investment, according to the understanding of all parties. In all such cases the question is always one of bona fides, for there certainly is no principle which prohibits a board from placing before stockholders any plan which may be for the supposed benefit of their property, and leaving it for them to consider it. This has been many times done by the C., B. & Q. Board, and very greatly to the benefit of its stockholders. It is a common transaction. The question always is, and must be, has there been bad faith, which would be equivalent to wrong doing, in other words, a fraud? Now, in this instance, the marks of good faith—of confidence in the value of the securities offered under the circular, so abound in the acts of the members of that Board, that none can be so blind as not to see it. They took much larger amounts of them than anybody else upon the same basis and paid for them at exactly the same rate. They were so confident that they even invested in stock which must become utterly worthless before the bonds should suffer, and which might become worthless when the bonds were good even. This presents proof even of exuberant confidence in the value of what they offered to stockholders, but which, even with this confidence, they did not venture to recommend, but simply to offer.

Had all this been stated with the explanations which should have accompanied the statements, the result could only have been to increase the confidence in every stockholder's mind in the value of the bonds offered them, and many more would have been asked for. It was not possible in the short limits of a circular to have stated all these arrangements between the several railroad companies, the objects to be gained, the importance to C., B. & Q. and all the motives which guided each member of the Board in obtaining control

of the construction stock. The simple facts, therefore, connected with the River Roads, and the object to be accomplished, were put into the smallest possible space, enough to show what it was understood the property was, and to enable stockholders to judge for themselves as fully as possible, which was all which it was deemed necessary.

On the whole review of the case, and with all the light of Judge Hoar's opinion, which has been fully considered, I conclude that there is no possible aspect of the case in which you and others can be made liable for your act as one of the C., B. & Q. Board for voting for the circular of June, 1871.

Yours Truly,

J. F. JOY.